

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Christopher Mills	Team: Team # 3	CCRB Case #: 201405942	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 06/11/2014 5:48 PM	Location of Incident: Ellery Street and Marcy Avenue	Precinct: 79	18 Mo. SOL 12/11/2015	EO SOL 12/11/2015	
Date/Time CV Reported Wed, 06/11/2014 5:59 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 06/16/2014 4:29 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Emilio Ortega	06216	916969	079 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Rodney Hale	24629	933826	079 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Emilio Ortega	Abuse: PO Emilio Ortega stopped the car in which § 87(2)(b) was an occupant.	
B.POM Emilio Ortega	Abuse: PO Emilio Ortega searched the car in which § 87(2)(b) was an occupant.	
C.POM Emilio Ortega	Force: PO Emilio Ortega used physical force against § 87(2)(b)	
§ 87(4-b), § 87(2)(g)		

Case Summary

§ 87(2)(b) filed this complaint with IAB via phone on June 11, 2014. At approximately 5:45 p.m. that day, § 87(2)(b) was driving with his supervisor, § 87(2)(b) and stopped at a red light at the intersection of Ellery Street and Marcy Avenue in Brooklyn behind a marked police vehicle, which remained stopped until the light had turned green. § 87(2)(b) honked his horn once, but the police vehicle remained in front of him until the light had turned red then green again. The police vehicle began moving but suddenly swerved and stopped. An officer, identified via investigation as PO Emilio Ortega of the 79th Precinct, got out of the vehicle and approached § 87(2)(b) (**Allegation A**). § 87(2)(b)'s window was open and he was playing loud music. PO Ortega leaned inside the vehicle (**Allegation B**) and attempted to turn the music down, then leaned back out of the vehicle and told him to turn it down. PO Ortega then reached in again and punched § 87(2)(b)'s left cheek, leaving a bruise (**Allegation C**), told him never to honk at a police officer again, and returned to his vehicle, then drove away. § 87(2)(b) went to § 87(2)(b), where he was diagnosed with a contusion and prescribed Naproxen for pain. § 87(2)(b) was not issued a summons or arrested.

Mediation, Civil and Criminal Histories

Mediation was not offered to § 87(2)(b) as an alternative to resolve his complaint since he sustained an injury as a result of the force used against him. As of January 23, 2015, he has not filed a Notice of Claim with the City of New York with regard to this incident. (Encl. 14j)

Without a New York State Identification Number, § 87(2)(b)'s criminal history could not be obtained.

Civilian and Officer CCRB Histories

§ 87(2)(b) has not filed any other complaints with the CCRB. (Encl. 3) PO Ortega has no substantiated complaints against him, though complaints of force, abuse of authority, and discourtesy have been made against him. (Encl. 4a-4b) The force allegations were closed as exonerated and complainant unavailable, while both discourteous actions were closed as unsubstantiated. Three abuse of authority allegations were unsubstantiated, while one was exonerated.

Potential Issues

No video footage could be obtained for this incident. A search for security cameras in the area yielded no TARU cameras and no NYCHA cameras that could have captured the incident, but there was one business with cameras facing the intersection. However, both the business and the building owner denied owning and operating the cameras.

Findings and Recommendations

Allegation A – Abuse of Authority: PO Emilio Ortega stopped the vehicle in which § 87(2)(b) was an occupant.

It is undisputed that PO Ortega stopped § 87(2)(b)'s vehicle and that § 87(2)(b) was playing loud music. However it is disputed whether PO Ortega was justified in doing so.

§ 87(2)(b) alleged that he was driving with his windows down, playing music that was loud but not extremely loud, and stopped at a red light at the intersection of Ellery Street and Marcy Avenue behind a marked police vehicle, which remained stopped until the light had turned green. § 87(2)(b) honked his horn once, but the police vehicle remained in front of him until

the light had turned red then green again. The police vehicle began moving but suddenly swerved and stopped in front of him, cutting him off, without using its lights and sirens. (Encl. 8a-8b) § 87(2)(b) s supervisor, § 87(2)(b) was in the passenger seat, and he provided a brief phone statement. (Encl. 9c) Though the investigation was unable to obtain a sworn statement from him, § 87(2)(b) stated that he and § 87(2)(b) were driving from work and playing music, when they stopped behind a police vehicle at a traffic light, which remained stopped when the traffic light turned green. § 87(2)(b) honked his horn once, but the police vehicle remained in front of him until the light had turned red then green again. The police vehicle began moving but then stopped in the middle of the road. § 87(2)(b) who indicated to the CCRB that he did not know § 87(2)(b) or § 87(2)(b) was driving behind § 87(2)(b) with his girlfriend, § 87(2)(b) and following the incident, provided his contact information to § 87(2)(b). § 87(2)(b) § 87(2)(b) also provided a brief, unverified phone statement, (Encl. 9b) in which he alleged that he stopped behind § 87(2)(b) s vehicle, and that § 87(2)(b) beeped his horn at a police vehicle directly ahead of him. § 87(2)(b) added that an officer jumped out of the vehicle and began yelling at the vehicle's occupants, and that he later heard the officer say not to honk an officer.

PO Ortega contended that § 87(2)(b) tailgated his vehicle while playing loud music, and he attempted to maneuver his vehicle next to § 87(2)(b) s vehicle for approximately six blocks. PO Ortega said that he then came to a red light, got out, and approached § 87(2)(b) s vehicle, which was approximately one or two vehicles behind his, in order to get the point across that § 87(2)(b) s music was too loud and that he had been tailgating. PO Ortega stated to the undersigned investigator that the music was loud enough that he could have issued a summons, though he chose to turn down § 87(2)(b) s music himself instead. (Encl. 11a-11b) PO Hale, who was PO Ortega's partner, stated that the officers drove up behind § 87(2)(b) who's vehicle was double-parked and playing loud music, and PO Ortega stopped him to tell him to turn down the music and re-park his car. PO Hale added that the interaction between PO Ortega and § 87(2)(b) was so short that he did not have time to get out of his vehicle, and that the officers drove away without knowing whether § 87(2)(b) did as instructed. (Encl. 13a-13b)

Penal Law 240.20(2) states that a person is guilty of disorderly conduct when he makes unreasonable noise with the intent to cause public inconvenience, annoyance, or alarm. (Encl. 2c)

§ 87(2)(g)

Allegation B – Abuse of Authority: PO Emilio Ortega entered and searched the car in which § 87(2)(b) was an occupant.

It is undisputed that PO Ortega entered § 87(2)(b)'s vehicle. It is disputed whether he was justified in doing so.

§ 87(2)(b) and § 87(2)(b) stated that they each observed PO Ortega reach into § 87(2)(b)'s vehicle immediately upon approaching him. (Encl. 8a-9b) PO Ortega contended that he told § 87(2)(b) "listen, your music is too loud and I also thought you were too close to me with your car" before reaching into § 87(2)(b)'s window and turning the music down, in order to demonstrate how § 87(2)(b) should turn his music down and illustrate that he could issue § 87(2)(b) a summons. PO Ortega did not give § 87(2)(b) a chance to respond before returning to his own car. He stated that he did not think § 87(2)(b) knew why he was being stopped and that § 87(2)(b) did not believe that his music was too loud, but that he believed he had gotten his point across. (Encl. 11a-11b) PO Hale stated that PO Ortega did not reach into § 87(2)(b)'s vehicle at all. (Encl. 13a-13b)

When a part of an officer's body impermissibly breaches the plain of a car doorway, such conduct amounts to a search without probable cause. People v. Hernandez 238 A.D.2d 131 (1st Dept. 1997). (Encl. 2d-2e) A police officer's entry into a citizen's vehicle must be justified in its inception and be reasonably related in scope and intensity to the circumstances which rendered their initiation permissible. People v. Smith 98 A.D.3d 590 (2nd Dept. 2012). (Encl. 1a-1b)

§ 87(2)(g)
[REDACTED]

Allegation C – Force: PO Emilio Ortega used physical force against § 87(2)(b)

It is disputed whether PO Ortega punched § 87(2)(b).
§ 87(2)(b) and § 87(2)(b) each stated that after reaching into § 87(2)(b)'s vehicle, PO Ortega punched him and told him that he should never honk at a police officer. (Encl. 8a-9b) § 87(2)(b) stated that he was punched in the left cheek, § 87(2)(b) stated that § 87(2)(b) was punched in the face, and § 87(2)(b) stated that § 87(2)(b) was punched a few times in the face. PO Ortega and PO Hale both denied that PO Ortega did so, though PO Ortega stated that he accidentally grazed § 87(2)(b)'s body, possibly his arm, when he reached into the vehicle. (Encl. 11a-11b) § 87(2)(b) stated that he went to § 87(2)(b) the next day, and he provided medical records to the undersigned investigator, that indicate that he was diagnosed with a contusion early on June 13, 2014. (Encl. Medical Records) A subpoena was sent to § 87(2)(b) for the medical records on July 6, 2014, and they will be added to the case file upon receipt at the CCRB. § 87(2)(b)'s girlfriend, § 87(2)(b) never provided a statement, but left a voice message with the undersigned investigator stating that she had seen an officer punch a man. (Encl. 9c)

Patrol Guide Procedure 203-11 states that officers must use minimum necessary force to affect an arrest. (Encl. 2f-2g)

§ 87(2)(g)
[REDACTED]

§ 87(2)(g) [Redacted]
[Redacted]

§ 87(4-b), § 87(2)(g) [Redacted]
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Team:

Investigator: _____
Signature Print Date

Supervisor: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date